ADMINISTRATION UPON ESTATES OF ABSENTEES.—A recent case, *Cunnius* v. *Reading School District* (1905), 198 U. S. 458, 25 Sup. Ct. Rep. 721, in the United States Supreme Court throws considerable light upon the much vexed question of whether or not it is possible for a state to provide for the administration of the estates of absentees without violating the "due process of law" clause of the Fourteenth Amendment. The court, in an opinion written by Mr. JUSTICE WHITE, holds that if such administration is based primarily upon the absence of the person for whose estate administration is sought, and not upon his death, it is valid, and does not constitute a taking of property "without due process" of law within the meaning of the amendment.

The facts in brief were these: Margaret Cunnius, prior to the year 1888, was domiciled in Pennsylvania and was entitled to receive from the trustees of the Reading School District annual interest on the sum of $569.61. In 1888 she disappeared, and had never been heard from up to 1897, when her son took out letters of administration upon her estate under the statute, and obtained payment of the accrued interest. In 1899, Margaret Cunnius, now Mrs. Smith, returned and sued the trustees for the money thus paid over; and, upon their pleading the statute in defence, attacked its constitutionality on the ground that it violated the Fourteenth Amendment by depriving her of her property without due process of law. From a decision of the Supreme Court of Pennsylvania (206 Pa. St. 469, 98 Am. St. Rep. 790, 56 Atl. Rep. 16) affirming the constitutionality of the statute, she took the case to the Supreme Court of the United States on writ of error.

The statute in question (Laws Pa. 1885, p. 155, Brightly's Purdon's Dig. Supp. 1885, p. 2184), is entitled "An act relating to the granting of letters of administration upon the estates of persons presumed to be dead from their long absence from their former domicile" and provides, in substance, that, upon application made to the register of wills under the circumstances set out in the title, the register shall certify the same to the Orphan's Court, which, after a hearing, if satisfied that the legal presumption of death is made out, shall so decree, and cause to be published for two weeks a notice requiring the absentee within three months to prove his continuance in life; that, if such proof is made, the letters shall not issue, otherwise they shall issue, and, together with all acts done thereunder, shall be valid until revoked. The property rights of the absentee are safeguarded, in the event of his return, by requiring that, before any distribution of his estate shall be made, each beneficiary thereunder shall furnish "personal real security" conditioned to reimburse the returning absentee for any property so received from his estate; and, if such security cannot be furnished, the money involved is to be placed at interest until the court shall decree its payment. A further provision makes invalid as against the absentee title to any property distributed during his absence.

The plaintiff set up three grounds of unconstitutionality: (1) that no government has inherent power to administer the estate of a living person, upon the presumption that he is dead; (2) that, even if such power exists at common law, it is expressly prohibited in this country by the Fourteenth Amendment; and (3) that the statute in question, in not providing for due notice to the absentee, in effect deprives him of property without due process

of law. None of these arguments found favor with the court. As to the first, it held, citing and reviewing the "absentee" provisions of the Roman Law, the Code Napoléon and the Louisiana Code, that such legislation is a legitimate and recognized exercise of the police power, provided, however, that it be based upon the fact of absence rather than the presumption of death; and, as to the third, it followed the ruling of the Supreme Court of Pennsylvania in holding the notice provided for to be reasonable.

The crux of the case lay in plaintiff's second contention that any administration upon the estate of an absentee violates the Fourteenth Amendment, if, as a matter of fact, the person was alive at the time the administration was instituted. This is the doctrine laid down in *Scott* v. *McNeal,* 154 U. S. 34, 14 Sup. Ct. Rep. 1108, and generally followed since that decision. The court, however, distinguishes the McNeal case from the one at bar, and holds it to be authority only for the proposition that a court, depending for its jurisdiction upon the death of a person, was without such jurisdiction until death occurs.

The distinction drawn by the court between the administration of the absentee as such and a deceased person seems to be logical and simple, but the reasons advanced for holding the Pennsylvania statute to belong to the former class do not appear to be conclusive. It is said without discussion that the statute is, in substance, a provision for a special proceeding for the administration of the estates of absentees, distinct from the general law of that state providing for the settlement of the estates of deceased persons. Granting this to be true, the question still remains, upon what theory the statute is based. Apparently it was upon the presumption of death, for it provides that letters shall not issue until after a judicial decree that the absentee is dead; and proof of his continuance in life is a complete bar to the issue. Furthermore, any such letters are revocable upon proof that the absentee is alive. It would seem, therefore, that the essential element of the proceeding is not the absence of the person for whom administration is sought, but his death. If this were purely an "absentee" proceeding, similar to those of the Louisiana Code (Revised Civil Code 1900, Art. 47-86), or the Code Napoléon, it must follow that the letters would issue upon proof of absence only; but this is negatived by the statute itself. Practically the only difference between the Pennsylvania statute and those of Vermont (St. 1894, § 2387) and Texas (Sayles Civ. Stat., Art. 1842), for instance, is that, in the latter, death is presumed from the absence, without a judicial decree, while the former requires a proceeding in court.

Viewing the statutes in other states in the light of the present case, it must be admitted that very few will stand the test therein laid down. The two statutes above cited, *i. e.,* Texas and Vermont, do not call for a special proceeding, although otherwise they seem to afford equal protection to the absentee. The same is true of the statutes of Arkansas (Dig. Stat. 1904, §§ 3081 and 235) and New Jersey. In Missouri (Rev. Stat. 1899, §§ 265 and 3144), Indiana (Burns' Ind. Stat. Rev. 1901, § 2385), Rhode Island (Gen. Laws 1896, p. 710), and Massachusetts (Rev. Laws 1902, p. 1304, et seq.), the statutes bar the absentee's right to recover either all, or a

portion, of his estate, and so deprive him of property without due process of law.

After all, the decision seems to have been based upon the broad ground of public policy, rather than upon a strict application of logical principles. It presents a simple and easy solution of one of the most difficult problems connected with the interpretation of the Fourteenth Amendment and will, undoubtedly, be of great benefit in the framing of future legislation upon this subject. C. H. L'H.

A LABOR UNION'S RIGHT TO DECLARE AND CARRY OUT A BOYCOTT.—What may or may not be done by a labor union to further the purposes of its organization is a much disputed question. The right of individuals to combine for the purpose of improving their position in the industrial world, and more specifically to secure an advance in wages, is now universally conceded, whatever the law may formerly have been on the subject. A strike, as such, is also quite generally held not to be unlawful. In the case of *Farmers' Loan and Trust Co.* v. *Northern Pac. R. Co. et al.*, 60 Fed. Rep. 805, the court took the view that a strike was necessarily illegal. "It has well been said that the wit of man could not devise a legal strike because compulsion is the leading idea of it." However, it is believed that a legal strike is altogether possible. In *Arthur et al.* v. *Oakes et al.*, 63 Fed. Rep. 310, MR. JUSTICE HARLAN said: "We are not prepared, in the absence of evidence, to hold, as a matter of law, that a combination among employés having for its object their orderly withdrawal, in large numbers or in a body, from the service of their employers, on account simply of a reduction in their wages, is not a 'strike,' within the meaning of the word as commonly used. Such a withdrawal although amounting to a strike, is not, as we have already said, either illegal or criminal."

When we come to consider the right of a labor union to organize and carry out a boycott against an employer, we are confronted with a very different question.

As typical of a very numerous class of late cases that have arisen out of the struggle for supremacy that is being waged between the powerful organizations of capital on the one hand and the equally powerful organizations of labor on the other, may be mentioned the case of *Loewe et al.* v. *California State Federation of Labor* (1905), 139 Fed. Rep. 71. This case grew out of the following circumstances:

The complainants, domiciled in Connecticut, are engaged in the manufacture and sale of hats. The defendants, California State Federation of Labor, San Francisco Labor Council, and Building Trades Council of San Francisco, are unincorporated Labor Unions affiliated with the American Federation of Labor.

The complainants operate an "open shop." The defendants sought to aid the scheme of the United Hatters of North America to force all manufacturers of hats in the United States to unionize their shops. The means used was a boycott instituted against complainants, their customers, and all persons selling or wearing hats made by them. Circular letters were sent out, pickets established, and many other questionable practices resorted to, but no actual